Respondents' assertion, Judge Sprizzo made no ruling or finding concerning malice or malicious prosecution. (Res. Br. at 20.)

5. Finally, Respondents spend pages reiterating the alleged facts underlying Mitsuhiro's alleged ouster from the Japanese companies that occurred in Japan and Hong Kong as a basis for concluding the Petitioners' acts were reprehensible. (Res. Br. at 20-23.) Respondents do not contest—because the Supreme Court of Japan has resolved the issue—that actions to remove Mitsuhiro from the Japanese companies were "lawful where [they] occurred." *State Farm*, 123 S. Ct. at 1522. Respondents' recitation of purported facts concerning actions in Japan and Hong Kong, accordingly, cannot form the basis of an increased punitive damages award.

Perhaps more importantly, Respondents' opposition, like the Appellate Division's decision, never mentions the explicit factors this Court in *State Farm* "instructed" all appellate courts to apply in determining reprehensibility: (1) whether "the harm caused was physical as opposed to economic"; (2) whether "the tortious conduct evinced an indifference to or the reckless disregard of the health and safety of others"; (3) whether "the target of the conduct had financial vulnerability"; (4) whether "the conduct involved repeated actions or was an isolated incident"; and (5) whether "the harm was the result of intentional malice, trickery, or deceit, or mere accident." *State Farm*, 123 S. Ct. at 1521. Because it remains questionable whether the evidence satisfied even *one* of these factors the Appellate Division's increased punitive damages award remains "suspect" *Id.* Nothing in Respondents' opposition attempts to satisfy even one of these factors.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: May 4, 2004

KENNETH A. LAPATINE
Counsel of Record
GREENBERG TRAURIG, LLP
885 Third Avenue
New York, New York 10022
(212) 801-2100

Attorneys for Takara Appellants

Of Counsel:

KENNETH A. LAPATINE
JOHN F. TRIGGS
ADAM D. COLE